

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUPER FUTURE EQUITIES, INC.

Plaintiff,

v.

**WELLS FARGO BANK, N.A., ORIX
CAPITAL MARKETS, LLC, ORIX USA
CORPORATION, ORIX MARKETS
PARTNERSHIP, JOHN DINAN,
MICHAEL F. WURST, CLIFFORD
WEINER, and JAMES R. THOMPSON**

Defendants.

**3-06-CV-0271-B
ECF**

**ORIX CAPITAL MARKETS, LLC'S RESPONSE TO COUNTER-DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

Pursuant to Federal Rule of Civil Procedure 56(b) and Local Rules of the United States District Court for the Northern District of Texas 56.3 and 56.5, Counter-Plaintiff ORIX Capital Markets, LLC ("ORIX Capital") files this Response to Counter-Defendants' Motion for Summary Judgment, and respectfully shows the Court as follows:

For the reasons set forth in ORIX Capital's Brief in Opposition to Counter-Defendants' Motion for Summary Judgment, filed under seal contemporaneously with this Response to Counter-Defendants' Motion for Summary Judgment, and in the evidence included in ORIX Capital's Appendix in Support of Their Brief in Opposition to Counter-Defendants' Motion for Summary Judgment Filed Under Seal, the Counter-Defendants are not entitled to summary judgment because the Counter-Defendants' Motion for Summary Judgment fails to satisfy their

initial burden of demonstrating an absence of evidence to support ORIX Capital's claims. Therefore, Counter-Defendants' conclusory assertions that there is "no evidence" to support the claims against them is fatally deficient. Secondly, there are genuine issues of fact on each element of ORIX Capital's causes of action for (1) libel *per se*; (2) business disparagement; (3) tortious interference with contract; (4) copyright infringement; and (5) conspiracy.

Pursuant to Local Rule of the United States District Court for the Northern District of Texas 56.3(b), the legal and factual grounds for ORIX Capital's Opposition to Counter-Defendants' Motion for Summary Judgment are set forth in its Brief in Opposition to Counter-Defendants' Motion for Summary Judgment Filed Under Seal and the evidence supporting this Response to Counter-Defendants' Motion for Summary Judgment is included in ORIX Capital's Appendix in Support of its Brief in Opposition to Counter-Defendants' Motion for Summary Judgment, also filed under seal, contemporaneously with this Response Motion.

ORIX Capital, therefore, respectfully requests that the Court deny Counter-Defendants' Motion for Summary Judgment and issue an order denying Counter-Defendants' Motion for Summary Judgment.

Dated: August 23, 2007

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Kelly R. Vickers

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 23, 2007 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by First Class Mail.

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